



## HISTORIC DISTRICT COMMISSION

Judge Welsh Hearing Room

October 24, 2012

3:30 p.m.

**Members Present:** Polly Burnell, Ryan Landry, Marcene Marcoux  
and David McGlothlin.

**Members Absent:** John Dowd, Chair

**Alternates Present:** Thom Biggert and Lance Hatch

**Staff:** Russell Braun, David Gardner, and Maxine Notaro.

**Others:** Ilana Quirk, town counsel

The meeting was called to order at 3:30 p.m.

### **Work Session 3:30 p.m.**

#### **•Public Statements**

Amy Germain, 150 Commercial Street, said that she is pleading for a generous solar panel policy. Even though we're a vibrant community, we're also a green community. It's important for us to meet that mandate and make it more affordable for people to live here. Solar panels are available by lease and you're just getting your energy provided by the sun. We're all interested in passive solar heat and we can start taking a leadership role on the Cape yet it's been reduced by the profile that sits on the top of a roof. The panels do not distract or detract – it is merely a shiny black panel. Also, they are above street level and eye level.

We should all do our part to bring on something different; we are not changing the structures – we are just adding to them. If you were to purchase a solar installation – it would be 3x the price. Those were her major points. She was thanked for her comments.

#### **Memo to HDC from Ilana Quirk, Town Counsel**

The memo (condensed) alleged that none of the policies currently guiding the HDC were arrived at in a fashion to render them enforceable.

At this point some of the members wanted to provide the historic nature of the policies and how they were derived.

David McGlothlin, Vice Chair, who was sitting in for the absent John Dowd, said that some of us are fairly new and a lot of these policies were adopted before we came on. If we could get a little history of how these policies came to be, he'd like to find out how we came to be where we are right now.

Marcene Marcoux explained that in January 25, 2006, the HDC's agenda listed the following: Discuss and Adopt Policy and Procedures: Cottages/Accessory Buildings Policy, Windows

Policy, Fences Policy and Rules and Regulations. These policies were discussed and passed at that 2006 meeting. Marcene stated that these policies were all based on the HDC Guidelines. They were not outside of the Guidelines but derived from them. She said that the Accessory Buildings/Cottage Renovation Policy, for example, was based on Guideline 15-11 Appendices, Appendix 1 and Appendix 2.A.

Marcene explained that the Solar Panel Policy was simply a working document and had not been adopted as a policy. She added that the Window Policy was no longer applicable since the Guideline on Windows had been altered by the changes passed by the voters at the April 2006 Town Meeting and accepted by the Attorney General in August 2006.

She then dealt with the other three policies. The Fence Policy is based on Guideline 15-11 Appendixes and number 11 Fences. It provides information for the public on height and design based on the Guidelines. The Accessory Building/Cottage Renovation Policy is based on Guideline 15-11 appendices, Appendix number 1 and Appendix number 2. The Hardship Case Policy helps residents understand the information they need to be considered as a hardship case. It is based on Guideline 15-7-6 Certificate of Hardship.

Marcene believes that the word “policy” has been misrepresented or misunderstood by town counsel. The HDC never added to the Guidelines nor altered the Guidelines but simply provided information to help the public make sense of the Guidelines. It is her suggestion that the word “policy” be substituted with Information and thus resolving exactly what a “policy” is.

It is important to add that no decision by the HDC has ever been made specifically referring to a policy. All decisions cite the Guidelines since they are the basis of all decisions by the HDC.

Polly Burnell – in adding to the background – said that the guidelines weren’t specific enough.

David McGlothlin said - that brings us to where we are now.

David McGlothlin said we have to determine what we should do - then make a decision on what we should do. He wants everyone to have all the correct information so that we can make an educated opinion.

Ilana Quirk said that the main question is whether the policies are enforceable. Can you use the language of the policies to deny or approve; provided they were advertised and approved by the HDC.

There are two issues – were the policies published, voted on, and then given to the town clerk. In the event that they were not advertised – then in her opinion it would not be in the HDC’s best interest to use them as law. Attorney Quirk continued - make sure that all the guidelines should be adopted - but are not binding. Also, she cautioned - do not use the non-existing policies to deny or approve. It would be best to have a disclaimer, i.e., *these are only informational in nature and the bylaw may be subject to interpretation.*

Marcene said that cottages came up and they are pretty clear. It's a huge cottage and they want it rebuilt (not sure what that referred to). Provincetown's unique and that's what we're dealing with and it can be confusing to the public, as well as our collective interpretation of these guidelines.

Maxine said - people want to see a cottage policy.

Maxine Notaro next mentioned Administrative Reviews - we thought we could just approve them administratively with only two members of the HDC. We have as many as 10+ a meeting that have to put on as agenda items. Once it's approved then we have to notify the abutters that the project has been approved. Seemed that abutters should be notified before a project and not after it's approved.

Marcene said that we've been using these policies and maybe the word "policy" is the problem. She'd feel better if we'd view this as informational and that would help. We always used the guidelines as the basis for the so-called policies.

Polly Burnell then added a bit of history, Eric Dray was the person who helped draft the bylaws of this HDC. He did say that all we're doing is summarizing the guidelines and we could revoke them for the board.

Ilana said that she wouldn't want to characterize them as interpretations of the HDC. I don't want to have language added but if you just put them out there and say they are merely informational.

Ryan Landry said that he's reasonably ignorant concerning exact language. Are you saying that anything that we've done to date is unenforceable? If we say that we're only informational - is that true?

Ilana - with respect to the policies being enforceable – they have to be voted upon after a public hearing, etc. If you don't attempt to adopt these regulations, then you don't have to go through all this.

Lance Hatch said that there has been this disconnect and when the folks who were originally here – since 2006 – are now looking at them as educational pieces. The other part is the terminology - and when the HDC adopted these policies - they had been appendices – so he'd really like the use of consistent language.

Thom Biggert - don't we relinquish our authority?

Lance - it's been 6 years since they've been created...

Marcene – going back to a case by case basis and it's been more or less on that basis for our decisions.

Thom – so on a case by case basis – did you assume that it was enforceable.

David McG. - do we use the word guidelines – so to have the word guideline in the policy is rather misleading. That’s the confusing part.

Ilana said that it has to be consistent. Again, as you interpret your bylaw, you want to be consistent. She also said that at the bottom of the form she has designed there should be a disclaimer. The group will go over the form and vote on it at the next meeting.

She said, too, that you have to look at the bylaw to see what was voted on and what wasn’t.

**Motion: Move that what has been called “policy” in regulations dealing with hardship and accessory - have the term changed to read informational (instead of policy).**

**Motion: Marcene Marcoux Seconded: Polly Burnell Vote: 5-0-0.**

Also, Ilana continuing the tutorial, said that when cases go to the courts – the judge in the case hasn’t been privy to all that came before – so he has to rely on a piece of paper before him which should be as complete as possible, i.e., date of hearing, reason for denial, name, number, and date of plan, and a copy of the deliberations that led up to the decision. In other words the minutes referring to the problem should be as complete as possible. Ilana recommended a separate sheet for the denial citing all the reasons.

The HDC was ready to adopt the form that Ilana had designed but Marcene felt that she’d like more time before she adopts it. It will be adopted at the next meeting.

●Review and approve minutes

**Motion: Move to approve the minutes of the October 9<sup>th</sup> meeting.**

**Motion: Polly Burnell Seconded: David McGlothlin**

**Vote: 4-0-2 ab (MM & RL)**

**Motion: Move to approve the minutes of the October 17<sup>th</sup> mtg as amended.**

**Motion: Polly Burnell Seconded: Thom Biggert Vote: 4-0-0**

●Discussion on Cottage Policy/Fence Policy/Window Policy

●Discussion on proposed Solar Panels Policy

●Discussion on required size of plans with application packets

●Discussion on Decision Form

The above 4 subjects were discussed – at length – in the above listed minutes.

●Brief discussion on Open Meeting Law procedures

Ilana asked if anyone had any questions for her on the open meeting law. She said that the Attorney General wants to see items on the agenda. It was pointed out that – at many times - we have people come in at the 11<sup>th</sup> hour and want desperately to have their plan considered. In any instance where there is a chance to proceed – you want to avoid litigation – even though it may seem foolish.

Thus, it was advised that you have to follow the 48 hour cut off rule and tell people that we do have an issue and rules and have to abide by them. Under the statute it can be filed during the meeting but the Atty Gen'l is really frowning on it. Just know that it's not the best practice.

David Gardner asked the HDC if they'd like to entertain a workshop. He also felt that it would be a good idea to go through your bylaws and identify areas that you'd like to look at.

David McG. said that everyone will take a look at their calendars and get back to David G.

It was decided that the October 9<sup>th</sup> Executive Session minutes would be reviewed at the next Executive Session and then held back from publication.

Amy Germain was allowed to return again and said – if you look at the 1700s and 1800s – there were turbines over the whole waterfront and she'd like the HDC to look at this as using solar energy in this same vein.

David McG. then said that solar panels will be put on the next agenda.

Next there was a discussion on size of plans that are to be presented to the HDC.

**Motion: Move to have the plans scaled 1/4" = 1 ft and just stamp the one 11" X 17" for the file.**

**Motion: David McGlothlin Seconded: Marcene Marcoux**

**Vote: 5-0-0**

**Adjournment happened by popular vote at 5:45 p.m.**

Respectfully submitted,

*Evelyn Gaudiano*

E. Rogers Gaudiano

Approved by \_\_\_\_\_ on \_\_\_\_\_, 2012.  
David McGlothlin, Vice Chair